IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8447 of 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

GUJARAT MARITIME BOARD

Appearance:

MR PARESH UPADHYAY for Petitioner No. 1

MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/07/2004

ORAL JUDGEMENT

1. In this petition the petitioner has challenged the order dated 19.2.1999 passed by the respondent whereby the deemed date granted to the petitioner by order dated 18th January 1999 was cancelled.

2. The petitioner was working with the respondent as

Junior Clerk since 7.3.1967 and his services were regularised in the year 1974. Thereafter the petitioner was promoted as Senior Clerk on 22.4.1982 and as head clerk on 27.6.1991. The respondent prepared a seniority list on 3.12.1997 and on the basis of the same deemed dates were required to be given in the cadre of senior clerk as well as head clerk. Accordingly the respondent authority passed necessary orders on 18.1.1999 whereby the petitioner was granted 20.8.1979 as deemed date of promotion in the cadre of senior clerk and 21.2.1986 as deemed date of promotion in the cadre of head clerk. However, the respondent authority without assigning any reason, withdrew the said order dated 18.1.1999 by issuing an order on 19.2.1999. It is the said order which is challenged in the present petition.

3.1 Mr. Paresh Upadhyay, learned counsel for the petitioner, submitted that the impugned order dated 19th February 1999 was passed in gross violation of principles of natural justice inasmuch as no notice was given to the petitioner while cancelling the order dated 18.1.1999. He submitted that the authorities had granted deemed date to the petitioner on the basis of the law laid down by this Court and on the basis of the instructions of the Government and also on the basis of the resolution adopted by the respondent board. According to him there was no reason whatsoever for withdrawal of the said order.

3.2 He submitted that the impugned order is without any basis or even against the basis of seniority which is already in favour of the petitioner. The authorities have finalised the seniority in the cadre of junior clerk vide circular dated 3.12.1997 on the basis of which the petitioner was given consequential seniority by way of deemed date in the higher cadres of senior clerk and head clerk. The said seniority list dated 3.12.1997 is as it is even today and therefore the impugned action is against the seniority determined by the respondent board itself.

4. Ms Sejal Mandavia, learned counsel for the respondent, submitted that since the order dated 18.1.1999 was not acted upon, it can be cancelled even without hearing the petitioner. She submitted that since some of the Resolutions of the Government as well as provisions of Central Recruitment Scheme and judgement of this Court in the case of Safimiya Malek were not brought to the notice of the Board, they have cancelled it immediately before it could be implemented.

5. Though the respondent has cancelled the order in question on the basis of some of the government resolutions, no such documents produced on record of this case. Even before this Court also the respondent has not assigned the reasons except the aforesaid statement. Apart from that, there is no dispute that the order dated 18.1.1999 was in favour of the petitioner. There is also no dispute that the said order has been unilaterally cancelled by order dated 19.2.1999. Admittedly no opportunity of hearing has been given to the petitioner and no reason has been assigned while passing the order impugned in this petition. Therefore, I am of the opinion that the order dated 19th February 1999, has been passed in violation of principles of natural justice, which calls for interference of this Court.

6. Ms Sejal Mandavia submitted that in a similar case, in Special Civil Application No.8448 of 1999, this Court by order dated 9.5.2002 had set aside the similar order and directed the respondent Board to pay all necessary benefits which have accrued pursuant to the impugned order. She submitted that a Division Bench of this Court in LPA filed against the aforesaid order set aside the direction regarding payment of arrears. Mr. Upadhayay submitted that such direction was set aside with the consent of the petitioner of that petition and therefore it cannot be treated as a precedent in the present case as the Court has not examined the matter on merits in the said LPA. I agree with the submission of the learned counsel for the petitioner as the Appellate Court has not considered the matter on merits while setting aside the direction and since the said order is a consent order, this Court cannot take it as a precedent. Therefore the contention of Ms. Mandavia that no direction can be given in respect of arrears cannot be accepted.

7. After hearing the parties and after perusing the documents on record, I am of the view that once any benefit is granted to any employee, before cancelling such benefits, the minimum requirement of notice and hearing is necessary. In the present case, the respondent has failed to show that they have afforded any opportunity of hearing to the petitioner before cancelling the order in question. Therefore, on the ground of violation of principles of natural justice the impugned order is required to be quashed and set aside. If the order of 19.2.1999 is cancelled, then naturally the petitioner would be entitled to get the benefit of the order dated 18th January 1999.

8. In the result, the petition is allowed. The impugned order dated 19.2.1999 at Annexure-A is quashed and set aside. Consequently the respondents are directed to compute and pay all the consequential benefits to the petitioner in pursuance of the order dated 18.1.1999. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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